



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0131]

RIN 1625-AA87

Security Zone, Christina River, Newport, DE

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone for certain waters of the Christina River to prevent waterside threats and incidents for persons under the protection of the United States Secret Service (USSS) as they transit by vehicle on the route 141 bridge over the Christina River near Newport, Delaware. The security zone will be enforced intermittently and only during times of a protected person transit over the bridge. Vessel traffic will be restricted while the zone is being enforced. This rule will prohibit persons and vessels from entering or remaining within the security zone unless authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0131 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215-271-4889, Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Since January of 2021 the United States Secret Service (USSS) has routinely requested, pursuant to authorities listed in 18 U.S.C. 3056, the Coast Guard to implement a security zone in the vicinity of the 141 bridge over the Christina River near Newport, Delaware. Between January 1, 2021, and July 20, 2021, the waterside security zone around the 141 bridge has been requested fourteen times. In response to these frequent requests the Coast Guard published a notice of proposed rulemaking (NPRM) on April 5, 2021, titled “Security Zone; Christina River, Newport, DE” (86 FR 17565). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to recurring transits of persons protected by the USSS across the 141 bridge in Newport, Delaware. During the comment period that ended May 5, 2021, we received one comment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. This rule must be immediately effective to guard against potential acts of terrorism, sabotage, subversive acts, accidents, or other causes of a similar nature.

III. Legal Authority and Need for Rule

Under the Ports and Waterways Safety Act, the Coast Guard has authority to establish water or waterfront safety zones, or other measures, for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure,

waters, or shore area, 46 U.S.C. 70011(b)(3). This rule safeguards the lives of persons protected by the Secret Service, and of the general public, by enhancing the safety and security of navigable waters of the United States during USSS protectee transits over the route 141 bridge over the Christina River near Newport, Delaware. The Coast Guard will activate the security zone when requested by the USSS for the protection of persons the USSS protects under 18 U.S.C. 3056 or pursuant to Presidential memorandum. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), as delegated by Department of Homeland Security Delegation No.00170.1(II)(70), Revision No. 01.2, from the Secretary of DHS to the Commandant of the U.S. Coast Guard, and further redelegated by 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 to the Captains of the Port. The Captain of the Port Delaware Bay (COTP) has determined that recurring transits of persons under the protection of the USSS, which started in January of 2021, present a potential target for terrorist acts, sabotage, or other subversive acts, accidents, or other causes of a similar nature. Due to the roadway passing over the Christina River, this security zone is necessary to protect these persons, the public, and the surrounding waterway.

IV. Discussion of Comments, Changes, and the Rule

A. Discussion of Comment

As noted above, we received one comment on our NPRM published April 5, 2021. The commenter made several points unrelated to this regulation.

First, the commenter suggested alternate modes of travel, such as Marine One, for those persons protected by the USSS, and expressed concern about potential delays to landside vehicular traffic. The Coast Guard does not direct movements of USSS protectees. The Coast Guard cannot change the travel routes or methods of USSS protectees. The USSS is tasked with providing the highest level of security for those it

protects and has requested the Coast Guard's assistance at this location. Accordingly, we have established this security zone, in consultation with, and at the request of the USSS.

In addition, the commenter questioned the cost-impact of the rule. The commenter has suggested that the rule would exceed \$100 million. We disagree with the commenter's statement. The costs of providing protection to USSS protectees is beyond the scope of this rule. The Coast Guard's responsibility within this rule is to secure the route 141 bridge over the Christina River near Newport, Delaware and a portion of the waterway extending from both sides of the route 141 bridge. The Coast Guard has assessed the economic impact of this rule and has concluded the impacts to recreational vessels to be minimal. We, therefore, disagree with the commenter's suggested economic cost – impact of this rule to be in excess of \$ 100 million.

B. Changes from the NPRM

We made no changes to the NPRM related to comments submitted. However, we removed the use of the term “VIP” and replaced it with the term “persons protected by the United States Secret Service” to provide greater precision with this regulation and the authorities granted to the USSS by 18 U.S.C. 3056. In paragraph (b), the definition section, we have removed the term “Very Important Person” (VIP) and added in its place “USSS protectee.”

C. The Rule

This rule establishes a security zone for the protection of persons protected by the USSS under 18 U.S.C. 3056 or pursuant to Presidential memorandum as they transit by vehicle on the route 141 bridge over the Christina River near Newport Delaware. This rule is necessary to expedite the establishment and enforcement of this security zone when short notice is provided to the COTP for persons protected by the USSS traveling over the route 141 bridge. The security zone is bounded on the east by a line drawn from 39° 42.55' North Latitude (N), 075° 35.88' West Longitude (W), thence southerly to 39°

42.50' N, 075° 35.87' W proceeding from shoreline to shoreline on the Christina River in a westerly direction where it is bounded by the South James Street Bridge at 39° 42.63' N, 075° 36.53 W. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A combined regulatory analysis (RA) and Regulatory Flexibility Analysis follows

This rule will establish a security zone around the route 141 bridge, which crosses over the Christina River near Newport, Delaware. The approximate size of the security zone extends along the river for 0.64 miles with a width of approximately 77 yards shore-to-shore. The security zone will be established 1 hour prior to the USSS protectee landing in the nearby airport. Prior to the 1 hour enforcement, the COTP will issue a broadcast via VHF-FM channel 16 allowing vessel traffic time to transit out of the enforcement

area.

In order to enforce this rule, the Coast Guard will station Coast Guard personnel at the borders of the security zones with the authority to manage boaters' movement through the security zone. Recreational boaters wanting to transit the area may inquire directly with the Coast Guard personnel (or other Federal, state, and local agencies assisting the Coast Guard in enforcement of this rule) posted at the boundaries of the security zones, rather than being required to contact the COTP for access to transit the area. In addition, once USSS and the USSS protectee are transiting towards the security zone, the zone becomes a restricted area and Coast Guard personnel will prohibit boaters from operating within the security zones.

Table 1: Summary of Rule's Anticipated Impacts

Category	Summary
Potential affected population	Since this waterway is not federally maintained, the Coast Guard does not have data on the amount of boaters that utilize this portion of the river, and as a result are unable to provide quantitative data pertaining to these boaters. However, the Coast Guard anticipates that those affected will be small recreational vessels that are capable navigating the shallow waters of the river.
Costs	The costs associated with this rule, is the loss of leisure time that boaters will encounter while waiting for the USSS protectee to transit across the security zone.
Benefits	This rule will secure an area that meets the objectives of the USSS to maintain USSS protectees safe.

Affected Population

The Coast Guard does not collect data on the vessels and individuals using the waterway, since the waterway is not federally maintained. However, the Coast Guard is able to surmise the type of vessel traffic by studying the navigational chart that encompass the security zone. From the navigational chart the Coast Guard is able to discern the water depth to be 1 to 8 feet deep, and vertical clearance (by observing the fixed bridges along the waterway) to range between 22 to 28 feet. Therefore, the Coast Guard concludes that the type of vessels most likely using the waterway are recreational

boaters.

Observable throughout Google maps, there is one access point, a boat ramp, located a few hundred yards from the route 141 bridge. During the enforcement of the security zone, local authorities will be restricting boater access to the river. As mentioned above, since this waterway is not federally maintained, the Coast Guard does not have data on the number of boaters that utilize this portion of the river; however, according to subject matter experts, the amount of traffic using this section of the river is minimal.

Costs

Once the security zone is implemented, the Coast Guard anticipates that recreational boaters transiting the waterway may have a very brief conversation with Coast Guard officials stationed at both ends of the security zone. If access to transit is granted, recreational boaters would then proceed through the security zone (without stopping or loitering) and exit the security zone in a timely manner. We anticipate that this conversation would last between 15 and 30 seconds per recreational boater. Because we do not know the number boats, or how many recreational boaters are on the average boat and because of how small the amount of interaction per recreational boaters is likely to be, we are unable to anticipate total quantitative impacted burden these conversations will have on the affected population.

In addition, during the actual transit of the USSS protectee crossing the route 141 bridge, all waterway traffic along the security zone will be halted. Since the USSS controls the movement of the USSS protectee, the Coast Guard is unable to discern the length of time the security zone will be closed once the USSS protectee is moving. Given the length of the bridge, the Coast Guard anticipates the length of time the security zone will be restrictive to be several minutes while the USSS protectee transits through the security zone.

Although the Coast Guard is unable to obtain information about the frequency of

boaters using the waterway, the Coast Guard was able to assess the rate by which leisure time is computed, and that rate comes to \$15.80 per hour. The elements used to tabulate leisure wage is outlined in the DOT travel time guidance document.¹ We also used the census information to obtain the median household income for the state of Delaware.² The DOT travel time guidance document provided the methodology for determining leisure time. Even though the document is assessing surface travel, we accept the methodology used in the document as a good approximation for determining recreational boater's leisure time.

Table 2: Summary of Leisure Wage Tabulated.

	Description	Values
Median Household Income	We obtained the income data for the State of Delaware from the census.	\$65,712
Reducing household income to hourly wage	To determine the hourly wage, we divided the median household income by 2,080, which is the approximate annual number of hours worked in a year by an individual working a 40 hour work week.	\$31.59
Value of Travel Time Savings (VTTS)	Is a ratio that measures an individual's willingness to pay to spend more time traveling, It is equal to 50% of the hourly wage rate.	50%
Total Leisure wage for Delaware	Calculated by multiplying VTTS by the hourly wage.	\$15.80

The cost of the rule would be leisure rate multiplied by the amount of time boaters are prevented from enjoying their leisure time. Unfortunately, as mentioned above, the Coast Guard does not have information pertaining to the number of boaters using this

¹ [https://www.transportation.gov/sites/dot.gov/files/docs/2015 Revised Value of Travel Time Guidance.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/2015%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf).

² <https://www.census.gov/library/visualizations/interactive/2019-median-household-income.html>.
Published September 2020.

waterway and, therefore, is unable assess total recreational boaters loss of leisure time for this rule. However, the Coast Guard is able to provide the per vessel (one individual boater per vessel) cost of this rule prior to fully restricting (100%) access to the security zone. The Coast Guard estimates interaction time between boaters and uniform personnel to average 23 seconds, for which we obtain an average per vessel cost of \$0.11(= \$15.80 leisure wage * .007 equivalent hours³). In addition, in order to estimate the cost associated when the full restriction of the security zone is implemented, we make the assumption that it will take 10 minutes for the USSS protectees to transit through the security zone. The Coast Guard estimates those cost to be \$2.69 (=\$15.80 leisure wage * .17 equivalent hours⁴). The combined costs of vessel-boater interaction with uniform personal is estimated at \$2.80. Although the information of the population is limited, Coast Guard is confident that the overall costs of this rule is minimal⁵.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

³ To calculate the equivalent hours of 23 seconds, we divide 23 by 3600 (3600 is the number of seconds in one hours). Hence, $23\text{sec} / 3600 \text{ sec} = .007$ equivalent hour.

⁴ Equivalent hour calculation for 10 min is $10\text{min} / 60 \text{ min} = .17$

⁵ The Coast Guard also estimated the round trip (arriving and leave Delaware using the same route) at \$5.60 per vessel.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone for the protection of USSS protectees as they transit the route 141 bridge over the Christina River near Newport, Delaware. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 is revised to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.560 to read as follows:

§ 165.560 Security Zone; Christina River, Newport, DE.

(a) *Location.* The following area is a security zone: All waters of the Christina River, from shoreline to shoreline bounded on the east by a line drawn from 39° 42.55' North Latitude (N), 075° 35.88' West Longitude (W), thence southerly to 39° 42.50' N, 075° 35.87' W thence along the Christina River in a westerly direction and bounded by the South James Street Bridge at 39° 42.63' N, 075° 36.53 W. These coordinates are based on North American Datum 83 (NAD83).

(b) *Definitions.* As used in this section--

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, State, or local law enforcement vessel assigned or approved by the COTP.

USSS protectee means any person for whom the United States Secret Service (USSS) requests implementation of a security zone in order to supplement protection of said person(s).

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33, entry into or movement within this zone is prohibited unless authorized by the COTP, Delaware Bay, or designated representative.

(2) Only vessels or people specifically authorized by the Captain of the Port, Delaware Bay, or designated representative, may enter or remain in the regulated area. To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 13 or 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. No person may swim upon or below the surface of the water of this security zone unless authorized by the COTP or his designated representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with lawful direction may result in expulsion from the regulated area, citation for failure to comply, or both.

(d) *Enforcement.* This security zone will be enforced with actual notice by the U.S. Coast Guard representatives on scene, as well as other methods listed in § 165.7. The Coast Guard will enforce the security zone created by this section only when it is necessary for the protection of a USSS protectee traveling across the route 141 bridge in Newport, Delaware. The U.S. Coast Guard may be additionally assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

Dated: July 23, 2021.

Jonathan D. Theel,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.

[FR Doc. 2021-16048 Filed: 7/26/2021 8:45 am; Publication Date: 7/27/2021]